

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

Thomas U.,

Case No. 0:17-cv-5038-KMM

Plaintiff,

v.

**ORDER**

Andrew Saul, Commissioner of Social  
Security,

Defendant.

---

This matter is before the Court on plaintiff's request for an award of \$9,173.42 in attorney fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Pl.'s Mot., ECF No. 35. The Commissioner<sup>1</sup> does not object to the request for fees. In relevant part, the EAJA provides that:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1). An application for fees and costs under the EAJA must show that the party is a prevailing party whose net worth was less than two million dollars when the civil action was filed and include: (1) a statement of the amount sought; (2) an itemized statement of the time spent by the attorney on the case; (3) a statement of the rate at which fees and other expenses have been computed; and (4) an allegation that the Commissioner's position is not substantially justified. 28 U.S.C. § 2412(d)(1)(B). Only "reasonable fees and expenses" may be awarded to a prevailing party. 28 U.S.C.

---

<sup>1</sup> Andrew Saul is automatically substituted for the former Commissioner of Social Security. Fed. R. Civ. P. 25(d).

§ 2412(b). The ultimate amount of an award is within the district court's discretion. *Johnson v. Sullivan*, 919 F.2d 503, 505 (8th Cir. 1990).

The Court has reviewed the entire file, including itemization of hours spent on this case and the calculation of the appropriate rate. The Court concludes that the \$9,173.42 in EAJA fees represents a reasonable attorney's fee in this case. Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motion for Attorney's Fees under the Equal Access to Justice Act (ECF No. 35) is **GRANTED**.
2. Plaintiff is awarded \$9,173.42 in reasonable attorney's fees, subject to offset by any preexisting debt that plaintiff owes to the United States.
3. The Commissioner shall pay the above-awarded fees, minus any applicable offset, to plaintiff by November 24, 2019.

Date: September 27, 2019

*s/Katherine Menendez*

Katherine Menendez  
United States Magistrate Judge